

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

GARY M. MURPHEY, et al.)
)
v.) NO. 3-10-0490
) JUDGE CAMPBELL
LATTIMORE, BLACK, MORGAN &)
CAIN, P.C.)

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket 60), Defendant's Objections thereto (Docket No. 61), and Plaintiffs' Response to the Objections (Docket No. 62). Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(3) and Local Rule 72.03(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections, and the file. The Objections of the Defendant are overruled, and the Report and Recommendation is adopted and approved.

For the reasons explained in the Report and Recommendation, the Court finds that there are genuine issues of material fact as to whether the knowledge of Becky Sullivan, Chief Financial Officer of Southeast Waffles, LLC ("SEW"), and/or the knowledge of two other SEW employees can be imputed to Plaintiff Murphey, as the liquidating agent for SEW. The Court further finds, alternatively, that even if such knowledge were properly imputed to SEW, there are genuine issues of material fact as to whether any exception would preclude Defendant from raising the imputation doctrine.

In addition, for the reasons stated in the Report and Recommendation, including the Collateral Source Rule, the Court finds that Defendant is not entitled to summary judgment as to

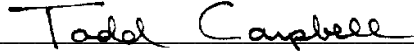
recovery for IRS penalties. The subject penalties are still due, and any recovery here would become part of the debtor's estate.

Finally, the Court finds, for the reasons set forth in the Report and Recommendation, that the issue of Defendant's intentional wrongdoing is a question of fact for the jury to decide.

Accordingly, Defendant's Motion for Summary Judgment (Docket No. 46) is DENIED.

The jury trial of this action shall be continued by separate Order.

IT IS SO ORDERED.



TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE